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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/719,785

11/21/2003

Edward Paul Carlin

9432

2937

27752

7590

11/29/2007

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EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

11/29/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/719,785	Applicant(s) CARLIN, EDWARD PAUL	
	Examiner Melanie J. Hand	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Terminal Disclaimer***

The terminal disclaimer filed on September 5, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 7,097,638 has been reviewed and is accepted. The terminal disclaimer has been recorded.

The terminal disclaimer filed on September 5, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 7,087,045 has been reviewed and is accepted. The terminal disclaimer has been recorded. It is noted herein that the previous Office action contained an error in the patent number for the associated double patenting rejection. The Office action cited U.S. Patent No. 7,087,405, when in fact the correct patent number is 7,087,045, the patent number cited in this terminal disclaimer.

It is noted that the terminal disclaimer filed September 5, 2007 to disclaim the terminal portion any patent granted on this application extending beyond the expiration date of U.S. Patent No. 7,214,218 is a duplicate of the terminal disclaimer filed February 1, 2006 and approved, as application No. 10/719,258 has been issued as U.S. Patent No. 7,214,218, thus the terminal disclaimer filed September 5, 2007 is redundant.

### ***Claim Rejections - 35 USC § 103***

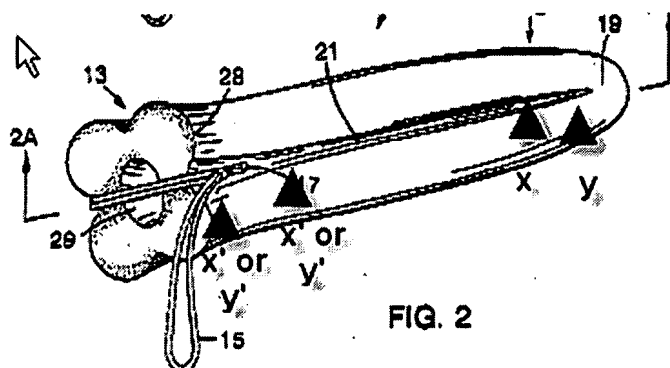
Upon further consideration of the claims, the following claim rejections are made herein.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 1, 4,5 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Child et al (U.S. Patent No. 6,283,952).

With respect to **claim 1**: Child teaches a tampon 10 for feminine hygiene comprising an insertion end 12, a withdrawal end 13, a longitudinal axis, and an outer surface. The tampon 10 is comprised of compressed fibrous material in the form of compressed pledget 40 comprising cellulosic fibers. The outer surface of said tampon 10 comprises a plurality of recessed portions 21, each of said recessed portions 21 comprising at the insertion end 12 of the tampon a first width dimension  $x$  and a second width dimension  $y$ , owing to the widening of the indentations as one progresses longitudinally from the insertion end 12 to withdrawal end 13 wherein said first width dimension  $x$  is greater than said second width dimension  $y$ . Each of said recessed portions 21 comprising at the withdrawal end of the tampon a first width dimension  $x'$  and a second width dimension  $y'$  owing to further widening of the recessed portions 21 at the withdrawal end. A marked version of Fig. 2 of Child is shown below to more clearly illustrate the Office's position.



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With respect to **claim 4**: The recessed portions 21 are considered herein to be arranged in a pattern inasmuch as they occur at regular intervals on tampon 10.

With respect to **claim 5**: The recessed portions 21 are parallel with said longitudinal axis. (Fig. 2)

With respect to **claim 8**: Recessed portions 21 create areas of further compressed absorbent material having greater density, therefore the tampon has a varying density over a cross-section of the tampon.

With respect to **claim 9**: Child teaches a compressed core 31, considered herein to be highly compressed as the article of Child meets all of the remaining limitations of claim 9.

With respect to **claim 10**: Child teaches that withdrawal end 13 comprises withdrawal member 15.

With respect to **claim 11**: Child teaches that withdrawal end 13 comprises finger indent 23.

***Claim Rejections - 35 USC § 103***

Upon further consideration of the claims, the following claim rejections are made herein.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Child ('952) in view of Schoelling ('859).

With respect to **claim 6**: Child does not teach that said recessed portions are spirally-shaped. The surfaces, grooves, ribs and distal vertices present in the tampon taught by Schoelling are spirally shaped. (Fig. 1, ¶ 0009) Schoelling teaches that the spirally shaped ribs and vertices create a larger surface area of absorption that the bodily fluid must travel over before exiting the body, thus creating increased opportunity for absorption and prevention of leakage versus straight ribs, therefore it would be obvious to one of ordinary skill in the art to angle the indentations taught by Child to create spirally-shaped first and second surfaces and spirally shaped distal vertices so as to create a larger surface area for absorption as taught by Schoelling.

With respect to **claim 7**: The tampon taught by Schoelling has a uniform density over a cross-section of the instant tampon. The motivation to combine the articles of Child and Schoelling is stated *supra* with respect to claim 6.

### ***Double Patenting***

The double patenting rejection of claims 1 and 4-11 over U.S. Patent No. 7,070,585 is maintained herein.

The double patenting rejection of claims 1 and 4-11 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/719,259. Although the conflicting claims are not identical, they

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are not patentably distinct from each other because the claims of the instant application are a broader recitation of the independent claim(s) of the copending application. This rejection is no longer a provisional obviousness-type double patenting rejection because copending application 10/719,259 is now passed to issue.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

November 23, 2007

*Tdalg*  
SPE AU3736.